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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/684,640	10/14/2003	Heidi A. Skillman	10233-2-1	3731

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EXAMINER
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HANEY, RICHAE LEE

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 05/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/684,640	<b>Applicant(s)</b> SKILLMAN, HEIDI A.	
	<b>Examiner</b> Richale L. Haney	<b>Art Unit</b> 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

The response to the office action of 9/8/2005 has been received. No claims have been amended or cancelled. Claims 1- 30 are pending in the application.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 – 23, 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herzberg (US 3,105,970) in view of Helen Joseph-Armstrong's "Patternmaking for Fashion Design" (pgs. 226 –27, 217). The device of Herzberg discloses a scarf comprised of either two or three layers of fabric (Figure 2), either chiffon (silk) or a knitted fabric for warmth (fleece) (Column 1, lines 56- 59 and 64-65), wherein the first panel has a peripheral edge extending from one end of said first panel top edge to the other end of said first panel top edge, and a second panel has a peripheral edge extending from one end of said second panel top edge to the other end of said second panel top edge (Figure 1), wherein all panels are generally triangular in shape, having a base and an apex, third and fourth sides extending from either side of the base to the apex and all layers are substantially congruent (Figure 1). The measure of the panel top edge to the lower part of the apex on the first panel and second panels

Art Unit: 3765

are dimensions A and B, respectively. The first and second panels are attached to form a peripheral seams by stitching (Figure 4, 20 and Column 2, lines 5 - 6) and a gathering means (Figure 3, 26) is used proximate to the top edge to form a plurality of pleats that form at least one air chamber proximate to the top seam (Figure 8). The invention also discloses a means for attaching the scarf around the neck of the wearer by joining a first and second tab portion located opposite one another and proximate said top seam (Figure 1, 24). The device of Herzberg does not disclose that dimensions A and B are different, wherein dimension A is greater than dimension B. Nor does the invention show that the pleats are formed by folding a portion of the front side of the first panel toward the top edge and that the pleats are held in place by stitching the folded portion. Joseph-Armstrong teaches the method of pleating by first extending or lengthening the first panel (Figure 1, pg. 226) portion to create the pleats (Figure 2, pg. 227) and folding the extended portion against itself in order to form the pleated portions (Figure 3, pg. 227) which returns the panel to approximately the original size of the pattern piece. The pleats are formed on the shoulder portion of the garment pattern and would be secured by stitching when the first front panel is joined with the back panel portion of a substantially similar size (Figure 5, pg. 217). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Herzberg by utilizing pleating as taught by Joseph-Armstrong, rather than the draping method shown in order to obtain uniform, even folds in a secured fashion.

3. Claims 24 –26 and 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herzberg and Joseph-Armstrong as applied to claims 1 – 23, 27 and

Art Unit: 3765

28 above, and further in view of Haliczzer (US 2,752,916). The modified device of Herzberg shows all of the claimed invention except for the tabs being sewn to the left and right backside edges of the pleated panels. The device of Haliczzer shows a left and right tab attached to the pleated face portion. The method of sewing is not specifically disclosed; however, it would have been obvious to someone of ordinary skill in the art to substitute the attachment method discussed with the method of sewing as previously taught. It would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify Herzberg and Joseph-Armstrong by attaching the closure tabs to the panel portions as taught by Haliczzer in order to achieve a more finished appearance for the article of manufacture.

#### ***Response to Arguments***

4. Applicant's arguments filed 2/13/2006 have been fully considered but they are not persuasive.

Applicant submits that the device of Herzberg does not show "at least one air chamber proximate said top seam" as recited in claim 1 or dimension A and B being different with A and B being dimensions of the front and rear panels from the top seam to the apex. Herzberg discloses rings 926) "placed on each neckband extension to incorporate folds of adjustable closeness." The fold of Herzberg would create air chambers proximate the top seam. According to the office action of 9/8/2005 the examiner points out that Herzberg is lacking dimensions A and B being of different sizes. The examiner relies on Joseph-Armstrong's "Patternmaking for Fashion Design"

Art Unit: 3765

to teach an alternative, and functionally equivalent method of creating folds which is well known in the art. Using the alternative method of folding fabric to form pleats as taught by Joseph-Armstrong would inherently create air pockets in the device proximate the top seam. In response, to the positioning of the panels, Joseph-Armstrong is relied upon to teach an alternative means of creating an folded pleats as claimed. The type of apparel garment that is created is not relevant to the issue at hand, furthermore the reference teaches having a panel of a first dimension and a panel of second dimension wherein the first panel is longer than the second panel and joining the two panels together. The positioning of the panels when adorned is not the feature of the prior art in which the examiner is referring to. This method of forming pleats is well known to those of ordinary skill in the art. The combination would have air chambers proximate the top seam.

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 3765

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richale L. Haney whose telephone number is 571-272-8689. The examiner can normally be reached on M-F 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on 571 -272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Richale L. Haney  
Patent Examiner  
Art Unit 3765  
September 1, 2005

RLH

  
JOHN J. CALVERT  
SUPERVISORY PATENT EXAMINER  
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